IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FAMILY COURT APPEAL NO. 80 of 2000

Anjali Mukund Hegde .. **Appellant**

V/s

Mukund Srinivas Hegde .. **Respondent**

Shri S.D.Mogre with V.D.Surve for Appellant

Ms Teja Katdare for Respondent

CORAM:S.B.MHASE AND

S.R.SATHE,JJ.

DATED:20th June 2006

JUDGMENT : (**Per S.R.Sathe,J.**)

1. Appellant, original Respondent-wife in Marriage Petition No.A 1256/1991 has preferred this appeal against the judgment and order passed by the Judge, Family Court No.4, Mumbai whereby the petition filed by the husband was partly allowed and decree for divorce was passed against the Respondent on the ground of cruelty. For the sake of convenience hereafter the parties shall be referred to as the Petitioner-husband and Respondent-wife.

2. Brief facts giving rise to this appeal are as under:

. The marriage between the Petitioner and Respondent took place on 15-6-1988 as per Hindu Rites. It was arranged marriage. After marriage, the Respondent wife started residing with Petitioner at his house situated at Prabhadevi, Mumbai. At that time, Petitioner's elder sister Savitri, who was unmarried and serving in Dena Bank, was also residing with the Petitioner so also Petitioner's younger brother. The Petitioner's father expired when the Petitioner was in college. There was no other earning member in their family. The Petitioner's elder sister Savitri therefore looked after her younger brothers and helped the Petitioner in completing his education. As a result of the same Savitri was respected in their family by every one.

3. After marriage Petitioner and Respondent had gone to Goa, Ooti etc. for honeymoon. It is the case of the Petitioner husband that though he and his family members were treating Respondent with love and affection, Respondent never assimiliated in the main stream of their family. She even used to refrain from talking with the Petitioner. She accused them of playing what she called "black magic" on her. Naturally, the Petitioner husband and other family members were hurt.

4. On 16-12-1988, Respondent wife informed the Petitioner

that she would go to her parental house for medical check up as at that time she was pregnant. After coming to know about the said news of her pregnancy, there was happy atmosphere in the petitioner's house. On her medical check up on 16-12-1988, the doctor advised the Respondent wife to take bed rest. She, therefore, continued to stay at her maiden home. Petitioner husband kept on visiting the Respondent's parent's house. After few days the Respondent wife was even admitted in the hospital. During that period petitioner husband used to visit the hospital every day. Finally on 20-3-1989 the Respondent gave birth to a male child. As soon as the Petitioner's husband came to know about the said news he went to hospital to see the newly borne baby. However, he was not permitted to see the child and Respondent informed that as per advise of doctor the newly borne baby is kept in a separate room. On 22-3-1989 when the Petitioner husband and his sister Savitri had gone to hospital, the Respondent's brother prevented them from taking the child in their arms by saying that doctor has advised not to touch the child in order to avoid infection. It is petitioner's case that on 23-3-1989 when he had been to the maternity home he noticed that Respondent's wife's maternal aunt had taken the child in a waiting room. Naturally, the Petitioner's husband and his family members were disturbed.

5. According to the Petitioner on 1-4-1989 Petitioner's mother returned from USA as she came to know about the

delivery of the Respondent and birth of newly male child. On her return to Mumbai, the Petitioner as well as his mother and sister Savitri went to the house of Respondent's parents to see the newly borne baby. When all of them were seeing the child and the Petitioner husband was about to lift the child, the Respondent wife raised screams and snatched the child, accusing that the Petitioner has intention to cause harm to child with black magic. After seeing such reaction of the Respondent the Petitioner as well as his family members got shock. However, in order to avoid any unpleasant incident the Petitioner and his mother and sister left the house of the Respondent's parents. It is petitioner's case that by preventing the Petitioner to meet and see his newly borne child, the Respondent-wife caused mental cruelty to him.

6. It is the case of the Petitioner husband that after the above incident he waited for few days and then asked the Respondent to return home, however, she refused. He also made efforts through her relatives for bringing her to his house. The Respondent and her family members did not invite him and his family members even for naming ceremony and till the time he filed the petition he was not even knowing that his son has been named as Pranav by Respondent wife. Thus according to Petitioner, the behaviour and conduct of the Respondent-wife in this connection also caused mental agony to him.

7. As the Responden-wife did not return to her matrimonial home after 16-12-1988 without any reasonable excuse and thus she also deserted the Petitioner, he issued notice through Advocate to the Respondent-wife on 22-7-1991 and called upon her to come and join unconditionally to him and also informed that failing which he would take necessary action.

8. As the Petitioner husband did not receive any reply to the above notice and she also did not join the Petitioner he filed petition for divorce against the Respondent-wife on the ground of cruelty and desertion and prayed that the decree for divorce be passed against the Respondent on the grounds mentioned in Section 13(1)(ia) and 13(1)(ib) of Hindu Marriage Act, 1955.

9. The Respondent wife filed her written statement and opposed the petition. She denied petitioner’s case that his elder sister Savitri shouldered the responsibility of the family after the death of petitioner’s father and that she helped the petitioner to complete his education. She contended that Savitri had met with an accident and due to her disability she did not marry. She also contended that prior to her marriage with petitioner, the Petitioner had told her that after the marriage Savitri would be staying separately in one room kitchen block at Prabhadevi. According to her, the petitioner deliberately suppressed the fact that his younger brother Vinayak was married and

was having one son of eight years of age and that Vinayak's wife was not residing with him. The Respondent further contended that after marriage, her relations with the petitioner, his mother and brother were cordial. However, she had not good relations with Savitri and Savitri was in fact not ready to accept her. According to her, Savitri was having influence over all members of the family and used to dictate her terms in the house. On flimsy grounds, she used to scold the respondent. She also denied the allegations that she was accusing petitioner and his sister on account of playing black magic. According to her, the petitioner's family members even did not perform the seventh month pregnancy ceremony and it is wrong to say that atmosphere in the family was happy when they came to know that respondent was pregnant.

10. The respondent wife also denied the allegations made by the Petitioner husband that she and her brother and other family members did not allow the Petitioner husband and his family members to take the newly born baby in their arms and that she raised screams and snatched the child from the petitioner's hand on 01/04/1989. According to her, she and newly born child were totally neglected by the petitioner and his family members. She was even prevented from returning to the matrimonial home. In January 1990, she went to her matrimonial home alongwith her mother. However, she was driven out by the petitioner. Thereafter, she made several efforts to

reconcile but petitioner refused. She also contended that all along she was and is ready and willing to join the petitioner and the petitioner has in fact deserted her. She therefore prayed for dismissal of the petition.

11. With these pleadings, the Ld. Judge of the Family Court, Bandra framed issues at Exh-10. In order to prove his case the Petitioner's husband examined himself at Exh-18, his sister Savitri at Exh-31 and friend Vijay Vaidya at Exh-34. As against this, the respondent wife examined herself at Exh-36 and one witness by name Uma Bhandari, a social worker.

12. After considering the oral and documentary evidence adduced by both the parties, the Ld. Judge of the Family Court, Bandra came to the conclusion that the Petitioner husband has proved that respondent wife caused mentle cruelty to him. The Ld. Judge however held that Petitioner husband failed to prove the ground of desertion. The Ld. Judge therefore passed a decree for divorce on the ground of cruelty.

13. Being aggrieved by the above mentioned order, the respondent wife has filed the present appeal. In this appeal before us Shri Mogare, learned Advocate for the respondent wife has urged three points. Firstly, he submitted that the learned trial Judge has not properly appreciated the evidence on record and has failed to take

into consideration variance between the pleadings and evidence. Secondly, he canvassed before us that the grounds mentioned by the petitioner husband namely respondent wife accusing the petitioner and his family members that they are playing black magic, not allowing the petitioner and his family members to touch the newly born baby and not inviting them for naming ceremony of the newly born child can not be said to be the acts of cruelty as contemplated u/s. 13(1)(ia) of the Hindu Marriage Act, 1955. Lastly, he submitted that there is absolutely no evidence to show that after the delivery of respondent wife, the petitioner husband or his family members had made any attempt to bring the respondent to their matrimonial home and conduct of the petitioner was in fact amounting to cruelty. He, therefore, submitted that the decree for divorce passed by the learned trial Judge be set aside and the petition filed by the husband be dismissed.

14. As against this, Mrs. Katdare, learned Advocate for the Petitioner husband supported the judgement and order passed by the Trial Court. She submitted that the facts of the case are sufficient to show that the marriage between the petitioner and respondent has broken down irretrivably and as such the decree passed by the Trial Court is legal and correct and the appeal be dismissed.

15. It is not in dispute that the marriage of the

Petitioner and Respondent took place on 5-6-988 and thereafter Respondent wife started residing with the Petitioner at his house situated at Prabhadevi. Admittedly, at that time the Petitioner's elder sister Savitri and younger brother Vinayak were residing with the Petitioner. From the evidence on record, it is clear that even the Respondent wife was aware of the said position. However, a feeble attempt has been made by the Respondent wife to show that prior to marriage the Petitioner husband had in fact promised her that after marriage Savitri would be residing separately i.e. in the block which stands in her name. However, if we carefully read the written statement as well as her evidence then it is clear that the Petitioner husband had in fact given full idea to the Respondent that Savitri would be staying along with them and Respondent had also in fact at that time expressed that she would also like to stay in the joint family. From the perusal of the entire evidence, it is also clear that the relations of the Respondent with Savitri were not cordial. It is most important thing in this case that the Respondent wife has time and again stated at various stages that she has no grievance or dispute with the Petitioner husband or his mother. So, the entire trouble has arisen because of the attitude of the Respondent wife towards her sister in law Savitri.

16. It does appear from the material on record that after the Petitioner's father death Savitri was the only earning

member in the family and it is because of her efforts the family was maintained and young brothers of Savitri could complete the education. Naturally, they had respect and regard so also love and affection for Saivtri. However, an attempt has been made on the part of the Respondent wife to show that Savitri had in fact not made any sacrifice. On the contrary, she had also received some money out of the family property and she did not marry because she became disable as a result of the accident which she met. However, the Respondent wife has failed to adduce any evidence worth the named to show that Savitri is in fact disable. The contention taken by the Respondent wife in this behalf is not correct. It is the case of the Respondent wife that Savitri was dominating the affairs of the said family. She often used to tell something to Respondent on minor issues like which type of sandal she should wear and what type of shirt the petitioner should wear. On one occasion when Respondent was cutting onion and it was Monday Savitri told her not to do so because according to her in their family it was not considered to be a good thing of cutting onion on Monday. Thus, one thing is certain that whatever grievances that was made by the Respondent about Savitri was also not of such a nature by which it can be said that Savitri was any way harassing the Respondent. Even then it seems that Respondent’s attitude towards Savitri was not fair and it was tainted with prejudice.

17. It is the case of the Petitioner husband that the Respondent used to allege that the Petitioner and his family members are playing black magic. While considering this allegation it must be noted that the Petitioner has nowhere specifically stated as to when for the first time such allegations were made by the Respondent. However, he has categorically stated such allegations were made even at the time when he and his family members had gone to see the newly born child. In fact it has come on record that Respondent had even alleged that her sister in law Savitri played some black magic on her Mangalsutra and as a result of the same she changed the same. It is the contention of the Respondent that she had never made any such allegations or accusation against the Petitioner or even against Savitri. However, it must be noted that the Petitioner's evidence in this behalf is fully corroborated by witness Vaidya who is examined on behalf of the Petitioner-husband. Shri Mogre, learned Advocate for the Respondent also submitted that evidence of Vaidya cannot be believed because he is an interested witness, he being a close friend of the Petitioner husband. However, while considering this contention, it must be noted that even at the time when some dispute arose between Petitioner and Respondent and Respondent started residing separately at her maiden home, she had even approached the witness Vaidya. This itself shows that even Respondent had full confidence in Vaidya. She was also of the view that Vaidya would listen her grievance and would try to

reconcile the matter. So, considering this aspect we cannot say that Vaidya is an interested witness. On the contrary, we find that even at the time when Respondent approached him he had in fact advised her to go to her matrimonial home and then the matter will be settled. So, having regard to all these facts and circumstances we are not at all inclined to accept the argument advanced by the learned Advocate for the Respondent in this behalf. On the contrary we accept the evidence of Vaidya and the same is sufficient to hold that the Respondent was making allegations against Savitri that she used to play black magic on Respondent. Naturally, the question arises whether making such allegations against sister in law amounts to cruelty or not ?

18. It is needless to say that in Hindu Marriage Act, 1955, the word cruelty has not been defined. However, there are authoritative pronouncements of the Apex Court wherein the apex court has laid down what cruelty means, as contemplated under Section 13(1)(ia) of the Hindu Marriage Act, 1955. In the case of Parveen Mehta v. Inderjit Mehta reported in **(2002) 5 SCC 706**> Their Lordships have observed:

> "Cruelty for the purpose of Section 13(1)(ia) is to be taken as a behaviour by one spouse towards the other, which causes reasonable apprehension in the mind of the latter that

> it is not safe for him or her to continue the matrimonial relationship with the other. Mental cruelty is a state of mind and feeling with one of the spouses due to the behaviour or behavioural pattern by the other. Unlike the case of physical cruelty, mental cruelty is difficult to establish by direct evidence. It is necessarily a matter of inference to be drawn from the facts and circumstances of the case. A feeling of anguish, disappointment and frustration in one spouse caused by the conduct of the toher can only be appreciated on assessing the attending facts and circumstances in which the two partners of matrimonial life have been living.

. In the reported case of Rajan Vasant Revankar V/s Mrs Shobha Rajan Revankar - **AIR 1995 BOM 246** the Division Bench of this Court has held that wild, reckless and scandalous allegations by wife against the husband's mother, his two married sisters and brother in laws amount to cruelty. The cruelty may be express or implied. It may be by words or conduct. Whether in a given case, the particular conduct of a party amounts to cruelty or not depends on several factors. While considering the question of mental cruelty it is always necessary to take into consideration the social status, educational level of the parties, the society in which the parties move, the

culture of the families which they belong to, their way of life the traditions and customs of both the families to which the parties belong. As all these factors are required to be considered while coming to the conclusion as to whether a particular conduct amounts to cruelty or not, it is said that concept of cruelty and its effect varies from individual to individual and from case to case. Particular conduct of a party in a particular case may not be considered as a cruelty but in different situation and circumstances such conduct can be termed as a cruelty. Thus, it is a matter to be determined in each case having regard to the facts and circumstances of that case. If it is a case of accusations and allegations, regard must also be had to the context in which they were made. In the case in hand, the parties are well educated, They are living in cosmopolitan city like Mumbai. The Petitioner, Respondent and even their close relatives are having service in bank or good institutions. Petitioner is doing business. So, allegations with regards to black magic were made against the petitioner or his elder sister for whom he had great love and affection and regard and respect, the same were bound to cause great mental agony to the Petitioner and to other members of the family. What is more to be noted is that from the evidence on record it appears that the allegations made by the Respondent wife were totally baseless. In fact having realised so, after making such allegations when the point of proving the same occurred she started contending that

she had never made such allegations.

19. It is pertinent to note that though the Respondent tried to establish that Savitri was dominating in the family and she had in fact not accepted her and Savitri had no love and affection for her, if we carefully read the evidence it is clear that Savitri had in fact treated the Respondent properly. Not only that but Savitri being elderly member in the family had even tried to see the comforts of the Respondent and to celebrate functions, such as celebration of seventh month's pregnancy etc. Not only that but it has also come on record that at times Savitri had purchased sarees and drama tickets for Respondent. Even then the Respondent tried to contend that she was neglected by the sister in law Savitri. However, her contention in that behalf is proved to be false. The learned trial Judge has also rightly arrived at such conclusion and correctly held that Respondent's allegations against Savitri regarding black magic are amounting to cruelty.

20. It is case of the Petitioner that after Respondent went to her matrimonial home and gave birth to male child on 20-3-1989 he had gone to matrimonial home to see the newly borne baby but he was not allowed to see the child. Of course, subsequently he has stated that he was allowed to see the child but was not allowed to touch him by Respondent and her brother on the ground that doctor has

advised accordingly in order to avoid possible infection. However, the Petitioner has also stated that when such was the position, he noticed that on third day, i.e. 23-3-1989 the maternal aunt of Respondent had taken the newly borne child in a waiting room. Naturally, it gave great shock to the Petitioner and it had hurt him. This is because he noticed that he was prevented from touching the child on the pretext that doctor has advised not to touch him, the other relative of Respondent had in fact taken the child in waiting room.

21. The Petitioner has stated that on 1-4-1989 his mother returned from USA and then he, his mother and Savitri went to the house of the Respondent's parents and when they were looking at newly borne child and Petitioner tried to lift the child Respondent snatched the child alleging that she was afraid of them because they would play black magic on the newly borne child. It is really very strange that the Respondent behaved in such fashion and even prevented the Petitioner from lifting the child particularly when we find that subsequently at various places she has clearly stated that she has no grudge or grievance against the Petitioner and his mother. Any father is certainly bound to get disturbed by such incident and it would linger long in his mind and cause mental agony to him.

22. It is the case of the Petitioner that they were not informed about the naming ceremony of the newly borne

child. He has stated that it was the tradition and custom in their family to name the grand son by the grand father's name and as a result of the same he had already informed the Respondent that if the male child is borne he should be named as Shriniwas, as the name of grand father was Shriniwas. Even then we find that Respondent did not call the Petitioner and his family members for naming ceremony. Thus, according to the Petitioner this also caused mental agony to him. However, it is the contention of the Respondent wife that no naming ceremony took place. However, at the same time the Respondent has clearly stated that newly borne child is named as Pranav. Question arises as to when and how he was named accordingly? Whether any idea of the same was given to father i.e. petitioner? Admittedly there is nothing on record to show that the Respondent wife had even consulted the Petitioner while naming the newly borne child. It is needless to say that any father would feel that he should be consulted while naming his child. Spouse may differ in giving a particular name to a child but it is really very strange to find that child was named by the mother alone without consulting her husband. This in fact shows that the respondent-wife had no regard, respect and affection for her husband and she did not care about his feelings. Having regard to these facts and circumstances the trial Court rightly held that the conduct of the Respondent was amounting to cruelty.

23. It is pertinent to note that after 16-12-1988 Respondent wife did not return to her matrimonial home. She tried to suggest that she made efforts but the Petitioner husband did not allow her to return. If really it had been so, then certainly she would not have stated time and again at various places including in the complaint which she made before Police as well as in the notice reply and then in the deposition that she has no grudge or grievance against the Petitioner. If one reads the entire evidence on record carefully then it clearly establishes that the Respondent wife was making false and baseless allegations against Savitri and some how rather she wanted to see that her husband resides separately from Savitri. In fact that is why even in the notice reply which was given after long time it is mentioned :

> "My client is still willing to come and stay with her husband at any place provided he does not fall under the bad intention of his sister".

24. Though the respondent-wife has tried to suggest that in January 1990 she had gone to her matrimonial home but she was driven out, she has miserably failed to prove the same. On the contrary, in notice reply it is mentioned that when she had gone accordingly she suggested to Savitri that her mother would stay in the matrimonial home to look after the newly borne child (which was in fact at

that time about 9 months) the sister-in-law Savitri did not approve the same and as such she returned to her maiden home. Thus it is very clear that as the idea of the Respondent to reside separately did not materialise she made false and baseless allegations against Petitioner and his family members and behaved in abnormal rude manner which caused great mental torture and agony to the Petitioner. It is wroth to note that though it is tried to be suggested that all along she was and is ready and willing to go and cohabit with the Petitioner she did not even issue any notice to the Petitioner in that behalf. Nor she filed any petition for restitution of conjugal rights. On the contrary, we find that it is the Petitioner-husband who issued notice for the first time to the Respondent and called upon her to come and stay unconditionally with him, within 7 days from receipt of notice. In spite of the same, the Respondent did not return even during the said period, nor she issued any reply and it appears that it is only after the filing of the petition the Respondent's reply dated 26-8-1991 was received by the Petitioner-husband.

25. Shri Mogre, learned Advocate for the Respondent has placed reliance on a case Sanjay Mehta Vs Malaben Mehta **2000(4) Mh.L.J.** to show that if there is variance in pleadings and evidence and whatever has been brought on record has in fact not been pleaded then the petition has to be dismissed. The facts of the said case and the facts

of the case in hand are quite different. In the instant case there is nothing to show that there is any material variance in the pleadings and evidence of the Petitioner. On the contrary, all the relevant facts are pleaded and proved by the Petitioner. So, the above mentioned ruling is of no use to the Respondent wife. The same is the case in respect of other following cases relied upon by the learned Advocate for the Respondent :

i. AIR 1995 Bom. 246
ii. AIR 1994 SC 710
iii. AIR 1975 SC 1534
iv. AIR 1988 Kerla 244, etc.

The facts of all these cases are totally different. In most of the cases mentioned above the husband and wife had lived together for considerable time. In the instant case the Respondent has lived in the matrimonial home for a very short period. Moreover, here the conduct and behaviour of the Respondent wife towards the Petitioner and his family members is unusual, abnormal and disturbing the piece of mind and causing mental agony to the Petitioner and his family members. So, the above cited rulings are of no use in the facts and circumstances of this case.

26. From the material on record it is very clear that attempts were made for reconcilation in the trial Court

but the same failed. Even in this court also, the attempts for reconciliation have failed. In fact it is pertinent to note that here is the case where we find that husband and wife had lived together hardly for 2/3 months and now they are residing separately for last about 16 years. The child is also now of about 16 years of age. So it is crystal clear that matrimonial bond between the Petitioner and Respondent is beyond repairs and there is irretrivable break down of the marriage. Naturally, the question arises whether these facts are to be taken into consideration while deciding the appeal. For this purpose useful reference can be made to a case of V.Bhagat V/s Mrs.D.Bhagat **AIR 1994 SC 710** wherein Their Lordships have observed :

> Though irretrievable break down of the marriage is not a ground by itself for divorce, while scrutinising the evidence on record to determine whether the grounds alleged are made out and in determining the relief to be granted, the circumstances that the marriage has irretrievably broken down can certainly be borne in mind. This is thus an additional factor which has to be borne in mind while considering the question of granting a decree of divorce."

27. Considering all the facts and circumstances of the

case we are of the considered view that now it is impossible for the parties to stay together and the marriage has become totally unworkable and it has seized to be effective and so this is an additional factor which must weigh in favour of the Petitioner husband.

28. In this view of the matter, we have no hesitation to hold that there is no substance in this appeal and there is no necessity to interfere with the findings recorded by the trial court.

29. Hence the appeal is dismissed. Under the circumstances of this case, the parties to bear their own cost of this appeal.

(S.R.SATHE,J.) **(S.B.MHASE,J.)**